U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 01 238 55560 Office: VERMONT SERVICE CENTER Date: FEB 27 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Chinese newspaper. It seeks to employ the beneficiary permanently in the United States as a junior editor. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petition's priority date is January 17, 2001.

The Application for Alien Employment Certification (Form ETA 750) prescribed the minimum education, training, and experience. It detailed a Bachelor of Arts degree in a journalism related field and two years' experience in the job offered.

The educational evaluation from FCE states that the beneficiary has the equivalent of a Bachelor Degree of Laws from a regionally accredited university in the United States. This evaluation states that, through more than 16 years of experience, the beneficiary has attained the equivalency of a degree of Bachelor of Arts in Law and in Journalism for employment purposes. Transcripts of law courses contained no content demonstrably related to journalism.

On September 26, 2001, the director requested evidence of a degree based on formal education only, the qualifications of the evaluator, and a detailed explanation of the material evaluated. In their absence, the director determined that, the petitioner had not established, as of the petition's priority date, that the beneficiary met the qualifications for the position as stated in

the labor certification. The petition was denied accordingly.

On appeal, counsel argues that relevant post-secondary education may be considered as training for "the purpose of the category." Counsel asserts that one who does not qualify as a professional may apply as a skilled worker. Though true, it does not follow that either application always will satisfy the pertinent requirements of the Form ETA 750 as to the beneficiary. Counsel contends, however, that the law degree will "... facilitate [the] beneficiary to analyze the events and subject matters from a legal stand of point. Therefore, [his] law degree is closely related to a journalism degree, which is the reason [he] is being offered the position as a [n] [junior] editor."

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the Form ETA 750 as of the day it was filed with the Department of Labor. Counsel and the evaluator point to no portions of the transcripts of formal education to satisfy the Form ETA 750 specification of a journalism related degree. Counsel contends, "The Service Center simply narrow-minded alternated the educational requirement."

On the contrary, the petitioner prescribed a journalism related degree for the labor certification. The petitioner failed to evaluate and present any elements of the formal education as pertaining to journalism. Counsel's analogy concerning the potential failure of certification for Peter Jennings, Dan Rather, and Tom Brokow [sic] breaks down, since it acknowledges that they are not involved in a like petition.

The petitioner has not established that the beneficiary met the educational requirements of the job on the priority date of the petition. Therefore, the petitioner has not overcome the director's decision denying the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.